APPENDIX A — EXCERPTS FROM BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD DATED APRIL 9, 1998

ORAL ARGUMENT: APRIL 9, 1998

Nos. 97-1417, 97-1418

UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

EXXEL/ATMOS, INC.

Petitioner

v.

NATIONAL LABOR RELATIONS BOARD

Respondent

and

UNITED STEELWORKERS OF AMERICA, AFL-CIO/CLC

Intervenor

ON PETITIONS FOR REVIEW AND CROSS-APPLICATIONS FOR ENFORCEMENT OF ORDERS OF THE NATIONAL LABOR RELATIONS BOARD

BRIEF FOR
THE NATIONAL LABOR RELATIONS BOARD

* * *

Appendix A

[Commencing at p. 23]

support or that the employer had a "good-faith" doubt, founded on a sufficient objective basis, of the union's continued majority status, *NLRB v. Curtin Matheson Scientific, Inc.*, 494 U.S. 775, 778, 787 (1990).

In withdrawing recognition from the Union in January 1995, the company relied solely on a decertification petition filed by one of its employees and on prior signed statements by a majority of the employees indicating opposition to the Union. (A 85.) The Board rejected the Company's defense, (A 28), on three separate grounds, which are equally applicable to the decertification petition and the signed statements.[5] First, the decertification petition (and the signed statements, which were submitted to the Board, (A 78-79), and were evidently meant to serve as a decertification petition) were unlawfully instigated by the Company. Second, under the terms of this Court's opinion

* * *

5. With respect to the decertification petition, the Company relies, (Br 41-42), on *NLRB v. New Associates*, 35 F.3d 828, 835 (3d Cir. 1994), which held that, where the Board refuses to tell the employer how many employees have supported a decertification petition, the employer is entitled to withdraw recognition "absent other evidence that the employer is aware of the insubstantiality of the decertification petition." This holding is, by its terms, inapplicable where the employer has improperly brought about the filing of the decertification petition or where its other unfair labor practices taint the petition. 35 F.3d at 835 n.5. Since, as shown in the text, both factors are present here, this Court need not pass on *New Associates*. We note, however, that *New Associates* effectively holds that the mere filing of a decertification petition places the burden on the General Counsel to prove that the employer did not have reasonable grounds for doubting the union's continued majority status contrary to the longstanding rule (see pp. 22-23 above) that the burden is on the employer to show that its doubt was reasonable.